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Supreme Court, U.S.
FILED

08-494 AUG 24 2008

No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

LEO STOLLER,

v.

PURE FISHING, INC.,
FISHING SPIRIT, INC.,
FISHUSA, INC.,

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Leo Stoller
7115 W. North Avenue #272
Oak Park, Illinois 60302
(312) 545-4554

QUESTION PRESENTED

1. Whether Circuit Rule 50 applies to rulings on FRCP 60(b) motions.

PARTIES TO THE PROCEEDING

Petitioner, Leo Stoller, 62, is a nationally known trademark expert, and a resident of the State of Illinois, County of Cook, 7115 W. North Avenue, #272, Oak Park, Illinois, 60302, (312) 545-4554; email: ldms4@hotmail.com.

Respondents are Pure Fishing, Inc.., an Iowa corporation, with its principal place of business in Spirit Lake, Iowa, 1900 19th Street, Spirit Lake, Iowa, 51360, d/b/a Berkley; Fishing Spirit, Inc., a Wisconsin corporation, with its principal place of business in Spirit Lake, Iowa, 1900 18th Street, Spirit Lake, Iowa; Fish USA, Inc., d/b/a FishUSA.com, with its principal place of business at 901 W. 12th Avenue, Erie, Pennsylvania, 16501.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion dated October 4, 2006 of the United States District Court for the Northern District of Illinois at **Appendix A-1** is unpublished. This opinion granted a default judgment against Petitioner for $96,751.81, and cancelled 35 STEALTH federal trademark registrations.

The opinion dated April 12, 2007 of the United States District Court for the Northern District of Illinois at **Appendix A-2** is unpublished. This opinion denied Petitioner's motion for relief from judgment.

The opinion dated May 29, 2008 of the United States Court of Appeals for the Seventh Circuit at **Appendix A-3**. This opinion affirmed the decision of the United States District Court for the Northern District of Illinois which is the subject of this appeal.

JURISDICTION

The date on which the United States Court of Appeals decided my case was May 29, 2008. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Petitioner's Fifth and Fourteenth Amendments of due process and equal protection.

STATEMENT

This is an action for trademark infringement arising out of an alleged violation of the Lanham Act and violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act. The trial court entered a default judgment against the plaintiffs/counter-defendants as a sanction for Leo Stoller signing a pleading with the permission of his attorney, Peter Woods.

Plaintiff/Counter-Defendant, Leo Stoller, as an individual and doing business as Central Mfg. Co., doing business as S Industries, Inc., doing business as Terminator, doing business as Stealth, doing business as Rentamark, doing business as Rentamark.com, doing business as Stealth Sports and Marine, doing business as Association Network Management, doing business as USA Sports Co., Inc., doing business as Stealth Industries, Inc., doing business as Central Mfg. Inc., doing business as S Industries, doing business as Sentra Industries, Inc.

Leo Stoller sought relief from final "arbitrary and capricious" judgments and orders entered by the District Court, Judge George Lindberg, on November 16, 2005, September 15, 2006, October 4, 2006, November 13, 2006 order granting motion for filing of bond to secure costs on appeal; December 12, 2006, and April 12, 2007. After Stoller's initial appeal was denied by the Seventh Circuit, when the Seventh Circuit denied Stoller's first request for an extension of time to file his initial appeal brief, Stoller then filed a FRCP Rule 60(b) motion before District Court Judge George Lindberg.

According to FRCP Rule 60(b), defendants may seek relief from a final judgment, order, or proceeding within a reasonable time, and not more than one year after the judgment, order, or proceeding was entered or taken, for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misinterpretation, or other misconduct of an adverse party.

Defendants will also show infra that:

(4) the judgment is void; and,

(5) other reasons justify relief from the operation of the judgment (see Rule 60 (b)

The District Court's above orders and judgments make a number of plain and prejudicial errors as listed in subparagraphs (1), (2), (3), (4) and (5) above.

Leo Stoller operates a trademark licensing business promoting the federal registration STEALTH. Leo Stoller held rights to 35 STEALTH federal trademark registrations, including Federal Trademark Registration No. 1,766,806, which registered on April 20, 1993, for the following goods: fishing tackle floats (bobbers). Leo Stoller licensed Lindy-Little Joe, a fishing tackle company, for over 10 years to use the mark STEALTH on a line of fishing tackle sold through the major retailers such as K-Mart and Walmart, etc. In 2005, Leo Stoller learned that Pure Fishing, Inc. and Fishing Spirit, Inc. commenced used of the name Spiderwire Stealth on fishing line. Pure Fishing, Inc. filed a trademark application, Serial No. *78-546,457* for the mark SPIDERWIRE STEALTH on January 12, 2005 for the use on fishing lines in International Class 28.

On August 16, 2005, the United States Patent and Trademark Office's examining attorney Jill I. Prater issued Section 2(d) - Likelihood of Confusion Refusal to the Defendants/Counter-Plaintiffs, Pure Fishing, Inc. and Spirit Fishing, Inc.

Order Dated November 16, 2005

On November 16, 2005, the District Court dismissed Petitioner's underlying case, with prejudice, and entered a default judgment against each of the counter-defendants on the grounds that Leo Stoller signed a pleading with the permission of Peter Woods, Esq. Leo Stoller asserts that the sanction imposed on November 16, 2005 was excessive and disproportionate to the alleged offense and conduct of Leo Stoller and Peter Woods. See transcript of hearing before Judge Lindberg. A default judgment is a sanction for misconduct during the litigation. Appellate review of decisions to impose, or withhold sanctions is deferential. See e.g., *Cooter & Gell v. Hartman Corp.*, 496 U.S. 384, 399-400, 110 S. Ct. 2447, 110 L. Ed. 2d 359 (1990); *National Hockey League v. Metropolitan Hockey Club,*

Inc., 427 U.S. 639, 96 5. Ct. 2778, 49 L. Ed. 2d 747 (1976); *Pretzel & Stouffer v. Imperial Adjusters, Inc.*, 28 IR3d 42, 45 (7th Cir. 1994).

District Court Judge Lindberg abused his discretion by entering a severe default judgment for a wrong that apparently caused no prejudice to the adverse party. See *Momnzaerts v. Hartford Ljfe & Accident Insurance Co.*, No. 06-2952, 2007 U.S. App. LEXIS 322 (7th Cir. Jan. 8, 2007). Cf. *United States v. McLaughlin*, 470 F.3d 698 (7th Cir. 2006).

A default judgment is a sanction for misconduct during the litigation. Appellate review of decisions to impose, or withhold, sanctions is deferential. See, e.g., *Cooter & Gell v. Hartmax Corp.*, 496 U.S. 384, 399-400, 110 S. Ct. 2447, 110 L. Ed. 2d 359 (1990); *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 96 S. Ct. 2778, 49 L. Ed. 2d 747 (1976); *Pretzel & Stouffer v. Imperial Adjusters, Inc.*,U.S. 28 F. 3d 42, 45 (7th Cir. 1994).

District Court Judge Lindberg abused his discretion by entering such a severe default judgment for a wrong that apparently caused no prejudice to the adverse party. See *Mommaerts v. Hartford Life & Accident Insurance Co.*, No. 06-2952, 2007 U.S. App. LEXIS 322 (7th Cir. Jan. 8, 2007), Ct. *United States v. McLaughlin*, 470 F. 3d 698 (7th Cir. 2006). See transcript of hearing.

District Court Judge Lindberg's excessive sanction and default judgment was unconstitutional in that it was disproportionate to the alleged offense, Leo Stoller signing a pleading with an attorney's permission.

Judge Lindberg also abused his discretion under FRCP 60(b) when he found that Leo Stoller was a vexatious litigant and barred Leo Stoller from initiating any lawsuits in the Northern District of Illinois. Stoller's motion for relief under FRCP 60(b) introduced new evidence which supported reversal of Judge Lindberg's findings.

As a direct result of Judge Lindberg's order, Leo Stoller was forced to file for Chapter 13 bankruptcy on or about December 10, 2005, Case No. 05 B 64075.

Order Dated December 19, 2005

In an order dated December 19, 2005, the District Court stated:

> "Before the Court is defendants/counter-plaintiffs' motion to enforce judgment [191-1] and counter-defendants' motion to vacate default judgment [201]. Both motions are denied because to date, judgment pursuant to F.R.C.R 58 has not been entered in this case. In this Court's November 16, 2005 order [185], it found each of the counter-defendants to be in default. However, the Court has not conducted a prove-up hearing or made any findings as to appropriate damages, if any, stemming from defendants' counterclaims. Defendants/counter-plaintiffs are ordered to file a brief in support of their purported damages, including all necessary affidavits and evidentiary support, by 11/16/05. Defendant's response is due

1/30/05 (sic). Upon review of the parties' written submissions, the Court will determine if an evidentiary hearing is necessary.

Defendants/counter-plaintiffs' request for sanctions pursuant to Rule 11 is denied for failure to comply with F.R.C.P. 11(c)(1)(A), which provides that such a motion must be made 'separately from other motions or requests.' In violation of F.R.C.P. 1 1(c)(1)(A), defendants/counter-plaintiffs made their request for Rule 11 sanctions as part of a combined motion to enforce judgment. [191]."

The Court denied Petitioner's request for sanctions.

Order Dated February 3, 2006

The February 3, 2006 order stated in part:

"In the interests of efficiency and judicial economy and because of the relationship between Mr. Stoller and his wholly-owned corporate counter-defendants, the Court exercises its discretion and stays all proceedings in this case, pending the resolution of Mr. Stoller's

> bankruptcy proceedings. The Court also finds that counter-plaintiffs, based on their own admission, have waived their rights to pecuniary damages as to each counter-defendant except Mr. Stoller...".

Trustee Richard Fogel, Esq. and counsel for the Pure Fishing, Inc., knowingly and willfully entered into a consent judgment for $969,751.81, which the Court entered on December 12, 2006, when Richard Fogel and counsel for Pure Fishing knew or should have known that the Defendants/Counter-plaintiffs' had waived their right to pecuniary (monetary) damages as to "as to each counter-defendant except Mr. Stoller."

Pursuant to the law of the case, the Agreed Final Order entered and executed by Judge Lindberg on December 12, 2006 is void *ab initio*.

DEFENDANTS/COUNTER DEFENDANTS FRAUD ON THE ILLINOI DISTRICT COURT

The court in order dated February 3, 2006 stated that the " counter-plaintiffs, based on their own

admission, have waived their rights to pecuniary (monetary) damages as to each counter-defendant except Mr. Stoller...". See also Appellant's Motion to Vacate *Nunc Pro Tunc* Settlement Agreement and Final Order Approving Settlement Agreement with Google, Inc. and Trustee's Local 54.3(A) Joint Statement in the Pure Fishing Case.

Judge Lindberg Recognizes That The Failure To Serve Leo Stoller Results In A Denial Of The Defendant/Counter-Plaintiffs' Motion For Filing A Bond To Secure Costs On Appeal

Judge Lindberg recognizes in a docket entry that was made by the Clerk on Thursday, October 26, 2006:

> "MINUTE entry before Judge George W. Lindberg: The motion for filing of Bond to Secure Costs on Appeal [230] is denied without prejudice for failure to serve Leo Stoller with a copy of the motion. To the extent Defendants/Counter-Plaintiffs' motion seeks an order requiring Leo Stoller, personally, to pay a bond,

Defendants/Counter-Plaintiffs must provide Leo Stoller with notice of the motion."

Judge Lindberg Establishes The Law Of The Case That Failure toServe Notice on Leo Stoller Is Fatal To The Defendants/Counter-Plaintiffs' Filing Of A Pleading

Judge Lindberg established that failure to serve Leo Stoller notice was fatal to the Defendants/Counter-Plaintiffs' filing of a motion for costs on appeal. Judge Lindberg ordered the Defendants/Counter-Plaintiffs to file and reserve the notice.

Order Dated August 22, 2006

The order stated:

"MINUTE entry before Judge George W. Lindberg: Response due 9/11/2006 to the motion by defendants Fishing Spirit, Inc., Fishusa, Inc., Pure Fishing, Inc., Counter Claimants Fishing Spirit, Inc., Fishusa, Inc., Pure Fishing, Inc. for judgment and for motion to Lift Stay and Enter

Final Judgment. Reply due 9/20/2006. Ruling set for 10/18/2006 at 9:30 a.m. Response due 9/11/2006 on motion by Defendants Fishing Spirit, Inc., Fishusa, Inc., Pure Fishing, Inc., Counter Claimants Fishing Spirit, Inc., Fishusa, Inc., Pure Fishing, Inc. Third Motion for Judicial Notice. Reply due 9/20/2006. Ruling set for 10/18/2006 at 9:30 a.m. No court appearance required on 8/24/2006."

Leo Stoller, *pro se,* never received a copy of the Minute Order dated August 22, 2006. Under 1RR.C.P. Rule 60(a) - Failure to provide notice to a party of a Court order and/or a pleading is sufficient grounds to vacate an order and/or judgment as a matter of law.

August 31, 2006

Leo Stoller's Chapter 13 was converted to a Chapter 7, and Richard M. Fogel was appointed Trustee on September 5, 2006. Trustee Richard Fogel informed Plaintiff's attorneys,

Fioretti & Lower, that they have no authority to act on behalf of Central Mfg. Inc. and Stealth Industries, Inc.

Order Dated September 15, 2006

Leo Stoller never received the Minute Order of George W. Lindberg dated September 15, 2006.

September 20, 2006

Attorneys Fioretti & Lower, who represented Central Mfg. Inc. and Stealth Industries, Inc., filed a Motion for A Request For An Extension of Time to Respond to Defendants/Counter-Plaintiffs' Motion to Lift Stay and Enter Final Judgment and Third Motion for Judicial Notice. The said motion by Fioretti & Lower was filed on behalf of Central Mfg. Co., Central Mfg, Inc., S Industries, Inc., Stealth Industries, Inc., and Sentra Industries, Inc. Leo Stoller was not a party to Fioretti & Lower's request for an extension of time because Trustee Richard Fogel had informed Fioretti & Lower that they had no authority to continue to represent any parties in the Pure Fishing case. Stoller

filed a motion before Bankruptcy Judge Jack Schmetterer requesting leave to have Fioretti & Lower represent his companies in the Pure Fishing case. Trustee Fogel opposed Stoller's request and Judge Schmetterer denied Stoller's request. After Richard Fogel was appointed Trustee on September 6, 2007, Stoller had no legal representative before Judge Lindberg in the Pure Fishing case. Richard Fogel breached his fidiuciary duty to the estate of Leo Stolelr by failing to allow Fioretti & Lower to represent Leo Stoller's companies in the Pure Fishing case. Leo Stoller had moved to disqualify Richard Fogel as Trustee in Bankruptcy proceeding No. 05 B 64075. This Appeal is pending before Judge William J. Hibbler, Case No: 06 C 06950. Leo Stoller was defending himself *pro se*, and Leo Stoller was never notified of Defendants/Counter-Plaintiffs' Motion to Lift Stay and Enter Final Judgment and Third Motion for Judicial Notice. The Defendants/Counter-Plaintiffs filed their Motion to Lift Stay and Enter Final Judgment on August 17, 2006. The only party that was noticed was Robert W. Fioretti & John B. Lower. Leo Stoller was not ever notified by Timothy C. Meece, counsel for Pure

Fishing, or any other party, that the motion to lift the stay and enter final judgment was filed on August 17, 2006. Failure to serve notice on Leo Stoller is fatal to the final orders and judgments issued in this case and demand that the Court vacate the final judgments and orders in this case for failure to serve on Leo Stoller Defendants/Counter-Appellant's Motion to Lift The Stay and Enter Final Judgment. The Court had already established in this case that failure to notice Leo Stoller resulted in the denial of " ... to the extent Defendants/Counter-Plaintiffs' motion seeks an order requiring Leo Stoller, personally, to pay a bond, Defendants/Counter-Plaintiffs must provide Leo Stoller, *pro se* with notice of the motion.

The attorneys for Defendants/Counter-Plaintiffs clearly took unfair advantage of the fact that Leo Stoller was in bankruptcy and refused and/or failed to notify Leo Stoller. Attorneys Fioretti & Lower, who represented the corporate Plaintiffs-Counter/Defendants, never represented Leo Stoller individually. Leo Stoller filed his Pro Se Appearance SA-

086. The Defendants/Counter-Plaintiffs had an obligation to serve Leo Stoller notice which Judge Lindberg recognized in his order dated October 26, 2006.

Under F.R.C.P. Rule 60, Leo Stoller was entitled to relief from judgment and orders in the Pure Fishing case for failure of the Defendants/Counter-Plaintiffs not providing notice to Leo Stoller.

After Richard Fogel was appointed Trustee of Leo Stoller' s Estate on or about September 6, 2006, Mr. Fogel had instructed Fioretti & Lower that they did not have any authority to proceed on behalf of Leo Stoller's corporations in the Pure Fishing case.

September 26, 2006

Leo Stoller never received the September 26, 2006 order SA-136.

Order Dated October 4, 2006

Judge Lindberg grants Defendants/Counter-Plaintiffs' Motion to Lift Stay and Enter Final Judgment. Leo Stoller never received notice of Defendants/Counter-Plaintiffs' Motion to Lift Stay and Entry of Final Judgment. Defendants failure to serve Leo Stoller its Motion to Lift Stay and Enter Final Judgment is fatal to Judge Lindberg's entry of an order granting Defendants/-Counter-Appellant's motion to lift stay and entry of final judgment on October 4, 2006. Leo Stoller requested that Judge Lindberg, as a matter of law, vacate its judgment entered on October 4, 2006 pursuant to Rule 60(b).

October 13, 2006

Defendants/Counter-Plaintiffs filed a Bill of Costs on October 13, 2006 SA-142. The Defendants failed to notify Leo Stoller of the Motion for Bill of Costs. The said motion is void *ab initio* and any judgment that results therefrom for failure to notify Leo Stoller.

October 18, 2006

Defendants/Counter-Plaintiffs filed a Motion for Filing of Bond To Secure Costs on Appeal and Petition for Award of Attorney Fees and Nontaxable Costs. Both motions are void *ab initio* for failure to serve a proper notice on *pro se* Plaintiff/Counter-Defendant Leo Stoller and any orders and/or judgments that resulted therefrom.

Judge Lindberg Recognizes That The Failure To Serve Leo Stoller Results In A Denial Of The Defendant/Counter-Plaintiffs' Motion For Filing A Bond To Secure Costs On Appeal

Judge Lindberg recognized in a previous docket entry that was made by the Clerk on Thursday, October 26, 2006:

> "MINUTE entry before Judge George W. Lindberg: The motion for filing of Bond to Secure Costs on Appeal [230] is denied without prejudice for failure to serve Leo Stoller with a copy of the motion. To the extent Defendants/Counter-Plaintiffs' motion seeks an order requiring Leo Stoller, personally, to pay a bond, Defendants/Counter-Plaintiffs must provide Leo Stoller with notice of the motion."

Docket entry [235] consists of Local Rule 54.3(a) Joint Statement and Agreed Order by Pure Fishing, Inc. (Attachments: #1 Exhibit 1 - Order of conversion and appointment of trustee - Order authorizing trustee action for corporations), Exhibit 18. Leo Stoller was never served with Defendants/-Counter-plaintiffs' Local Rule *54.3(a)* Joint Statement and Agreed Order and is void *ab initio* for the same reason that Judge Lindberg denied the Defendants/Counter-plaintiffs' motion for filing a bond to secure costs on appeal.

December 9, 2006

Leo Stoller filed and served on counsel for Pure

Fishing, Inc., Timothy C. Meece, and Richard M. Fogel, Trustee, Stoller' s Motion To Object To Agreed Rule 54.3(a) Joint Statement And Agreed Final Order Which Provided A Judgment In Favor Of Pure Fishing in the Amount of $969,751.81. Stoller objected to Defendants/Counter-plaintiffs' Local Rule *54.3(a)* Joint Statement and Agreed Final Order. See Stoller's Motion To Object To Agreed Rule 54.3(a) Joint Statement And Agreed Final Order Which Provided A Judgment In Favor Of Pure Fishing In The Amount of $969,751.81.

"Leo Stoller has filed an appearance in this case and is acting pro se. Leo Stoller never received any copy of Pure Fishing 'time and work records' on which their fee award request is based. In clear violation of Local Rule 54.3(a), Pure Fishing made no attempt in good faith to meet and confer with Leo Stoller 'to agree on the amount of fees or related nontaxable expenses that should be awarded prior to filing a fee motion', in violation of LR 53.3(d). Pure Fishing's request for an award of attorneys fees and nontaxable costs of $759,303.20 is void *at initio* for failing to comply with Local Rule 54.3 - Attorney's Fees and Related Non-

taxable Expenses.

Leo Stoller further objects to any agreement that the Trustee Richard Fogel enters into with Pure Fishing as it relates to Leo Stoller' s companies Central Mfg. Inc. d/b/a Central Mfg. Co. and Stealth Industries, Inc. on the grounds that Leo Stoller has filed a request to remove Richard Fogel as Trustee because he is not acting in the best interest of the creditors of the estate of Leo Stoller. As evidenced by the fact that Richard Fogel did not object to even one entry of Pure Fishing's request for $759,303.20 despite the fact that upon information and belief, the said fee request contains double billings for the same work that was performed by two different law firms in violation of the controlling case law, the *Continental* case regarding attorneys fees. Leo Stoller is appealing his motion before the Bankruptcy Court to disqualify Richard Fogel as trustee of Leo Stoller' s estate. Therefore, any agreement entered into by Mr Fogel is tainted and should be rejected until the Appeals court rules on Stoller's motion to disqualify trustee Richard Fogel."

Leo Stoller served his Motion to Object to Agreed Rule 54.3(a) by mail to the attorneys of record and hand-delivered it to the Clerk of the Court, U.S. District Court, 219 S. Dearborn, Chicago, Illinois, on December 9, 2006.

"The fact that a party mails a document creates a rebuttable presumption that the addressee actually received the mailing." Gentleman wrote, citing *Hagner v. Us.*, 285 U.S. 427 (1932). "Further, a party need not show conclusively that a document was placed in the mail; a custom or policy of mailing creates a presumption that such mailing occurred."

December 12, 2006

Notwithstanding Stoller's filing of his Motion To Object To Agreed Rule 54.3(a) Joint Statement And Agreed Final Order Which Provided A Judgment In Favor Of Pure Fishing In The Amount of $969,751.81, on December 9, 2006, Judge Lindberg issued the following Minute Order.

"MINUTE entry before Judge George W. Lindberg: Mr Stoller's motion to object to the agreed 54.3(a) joint statement will not be heard on 12/12/06 because Mr. Stoller failed to comply with the court's three-day notice requirement for the presentation of all motions. Further, the motion to object to the agreed Rule 54.3(a) joint statement [256] is denied as moot because the court entered the agreed order before it received the instant motion.

Stoller clearly filed his said motion with the Court's three-day notice requirement. Furthermore, the Court acknowledges that it received Stoller' s said motion and denied Stoller' s motion as moot "because the Court entered the agreed order before it received the instant motion." This was clear error, abuse of discretion and grounds for reversal under Rule 60(b).

Judge Lindberg Establishes The Law Of The Case That Failure to Serve Notice on Leo Stoller Is Fatal To The Defendants/Counter-Plaintiffs' Filing Of A Pleading

Judge Lindberg established that failure to serve Leo Stoller notice was fatal to the Defendants/Counter-Plaintiffs' filing of a pleading or motion on Leo Stoller. All of the pleadings that were filed in this case which were filed without service upon Leo Stoller, deprived Leo Stoller of his due process and equal protection under the Fifth and Fourteenth Amendments of the U.S. Constitution. The Defendants/Counter-Plaintiffs' failure to serve Stoller the pleadings which led to the judgments in this proceeding demanded that, pursuant to 1RR.C.P. 60(b), the Court relieve Leo Stoller from any final judgment and/or orders.

Further, in view of the fact the orders and judgments in this case are defective as against one party, Leo Stoller, they are therefore defective against all parties, Plaintiffs/Counter-Defendants, and the Court is requested to vacate in its entirety any and all orders and/or judgments entered against the Plaintiffs/Counter-Defendants as a matter of law.

Judge Lindberg's Reversible Error

The Seventh Circuit was unable to consider whether the District Court abused its discretion in denying the motion to vacate because the court's one sentence order does not explain its decision. Circuit Rule 50 provides that "whenever a district court resolves any claim or counterclaim on the merits, terminates the litigation in its court ... the judge shall gives his or her reasons, either orally on the record or my written statement." The purpose of this Rule is three-fold: "To create the mental discipline that an obligation to state reasons produces, to assure the parties that the court has considered the important arguments, and to enable a reviewing court to know the reasons for the judgment." See *Western States Inc. Co. v. Wisconsin Wholesale Tire, Inc.*, 148 F. 3d 756, 758 (7th Cir. 1998) (per curium); *Pasquino v. Prather*, 13 F. 3d 1049, 1051 (7th Cir. 1994); *Sims v. Lucas*, 9 F. 3d 1293, 1294 (7th Cir. 1993) (per curium).

Judge Lindberg's April 12, 2007 does not satisfy Circuit Rule 50. The district court did not explain why, for the purposes of Rule 60(b)(1) review. The Court's

order is inadequate because it does not even consist of a bare conclusion of law or an "analysis of the relevant facts and law leading to its conclusions." *Western States, id. Dunphy v. McKee,* 134 F. 3d 1297, 1302 (7th Cir. 1998); *LaSalle Bank Lake View v. Seguban,* 54 F. 3d 387, 393 (7th Cir. 1995); *Pasquino,* 13 F. 3d at 1050; *In re Shell Oil Co.,* 966 F. 2d 1130, 1132-33. Therefore, the order must be vacated and remanded to the district court for an explanation consistent with Circuit Rule 50. See *Western States,* 148 F. 3d at 759-60; *Dunphy,* 134 F. 3d at 1302; *Sims,* 9 F. 3d at 1294. See *Rose Baker Parons v. City of Aurora, et al.,* 1172, U.S. Court of Appeals for the 7th Circuit), 2000 U.S. App. LEXIS 16237. This Court has also the discretion to grant the Appellant the relief requested below because Judge Lindberg has evidenced a clear bias and prejudice against Leo Stoller thus far. Judge Lindberg even refused to clarify his order dated October 4, 2006. Leo Stoller merely made a request for clarification.

In a terse response, Judge Lindberg refused to even clarify his order. The record is clear that Judge Lindberg has issued the most severe sanction in the

history of the Northern District of Illinois, canceling all of Stoller's STEALTH marks, fining Stoller over $950,000 as a sanction disproportionate to Stoller's alleged wrongdoing. Now Judge Lindberg refuses to even clarify his October 4, 2006 order. There is no question that Judge Lindberg is biased and prejudiced against Leo Stoller.

REASONS FOR REVIEW

The Seventh Circuit dismissed Stoller's initial appeal. Subsequently, Stoller filed a motion under FRCP 60(b) before the District Court, Judge Lindberg. Judge Lindberg erroneously denied Stoller's FRCP 60(b) motion with a one word order dated April 12, 2007, in violation of Circuit Rule 50.

Circuit Rule 50 states:

> Whenever a district court resolves any claim or counterclaim on the merits, terminates the litigation in its court (as by remanding or

transferring the case, or denying leave to proceed *in forma pauperis* with or without prejudice), or enters an interlocutory order that may be appealed to the court of appeals, the judge shall give his or her reasons, either orally on the record or by written statement. The court urges the parties to bring to this court's attention as soon as possible any failure to comply with this rule.

The Seventh Circuit ruled on May 29, 2008:

We have never explicitly stated whether Circuit Rule 50 applies to rulings on Rule 60(b) motions, nor do we have any occasion to resolve that question here ....

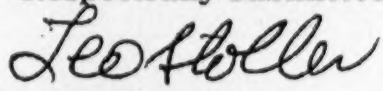
SUMMARY

In view of the fact that the Seventh Circuit has refused to clarify whether Circuit Rule 50 applies to rulings on FRCP 60(b) motions, this Court is requested to issue a clarification.

CONCLUSION

Petitioner is requesting that this Court resolve the question as to whether Circuit Rule 50 applies to rulings on FRCP 60(b) motions.

Respectfully submitted,



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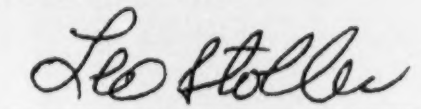
STATEMENT

Petitioner certifies that all materials are listed in the appendix contained in this brief.



Leo Stoller

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LEO STOLLER,

v.

PURE FISHING, INC.,
FISHING SPIRIT, INC.,
FISHUSA, INC.,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

APPENDIX

DECISION

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

LEO STOLLER

v.

PURE FISHING, ET AL.

Case No: 05-C-725
Date: April 12, 2007

Before George W. Lindberg, Judge

Mr. Stoller's motion for relief from judgment is denied.
No appearance required on 4/25/07 at 9:30 a.m.

IN THE
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Case: No. 07-1936
Date: May 29,2008

LEO STOLLER,

P1ainttff/Counter-Defendant-Appella nt~

v.

PURE FISHING INC., *et al.,*

Defendants/Counter-Plaintiffs-Appel lees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 05 C 725—George W. Lindberg. *Judge.*

SUBMITTED DECEMBER 19, 2007[1]~DECIDED MAY 29,2008

Before RIPPLE, MANION, and WOOD, *Circuit Judges.*

WOOD, *Circuit Judge.* After appealing a default judgment entered against him and having that appeal dismissed for failure to prosecute, Leo Stoller filed a motion under Fed. R. Civ. P. 60(b) asking the district court to reconsider the underlying merits of the default judgment. Stoller now appeals the district court's denial of the Rule 60(b) motion. We affirm.

The present dispute stems from a lawsuit for trademark infringement that Stoller, along with one of his companies known as Central Manufacturing Company (CMC), Med against Pure Fishing Incorporated (FF1) and other related entities. After protracted and contentious litigation that expanded to

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[1] After examining the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See FED. R. APP. P. 34(a)(2).

include multiple counterclaims, the district court entered a default judgment against CMC and Stoller and awarded PFI damages, costs, and attorneys' fees on one of its counterclaims. Stoller (apparently purporting to act on behalf of both CMC and himself) Med a timely notice of appeal, which was docketed in this court as No. 06-3792.

PFI then filed a motion in the district court to require Stoller to post a bond as security for the costs and fees associated with his appeal. The district court granted the motion, and Stoller promptly filed a second notice of appeal, which was docketed as No. 06-4057. We construed this second notice as a motion to suspend enforcement of the order requiring an appeal bond. We then denied the motion and in an order dated February 12, 2007, we dismissed the appeal in No. 06-3792 for failure to prosecute because Stoller failed to pay the bond or Me an appellate brief.

Two months after we dismissed his appeal, Stoller filed in the district court a Rule 60(b) motion in which he

rehashed the merits of his underlying lawsuit and complained about various orders that had been entered against *him* in that lawsuit. The district court denied the Rule 60(b) motion in a one-line order; that action prompted the present appeal. Stoller argues that the district court abused its discretion when it denied the Rule 60(b) motion and that the district court's one-line order violated Circuit Rule 50. He also complains about an order designating him as a vexatious litigant who must receive prior authorization before filing any new lawsuits, though it is not clear whether his challenge refers to an order issued by the district judge or by the Executive Committee of the Northern District, both of which barred him from further filings.

We review a district court's denial of relief under Rule 60(b) for abuse of discretion. See *Arrieta v. Battaglia,* 461 F.3d 861, 864 (7th Cir. 2006). The district court's order here was decidedly not an abuse of its discretion, because all of the arguments in Stoller's Rule 60(b) motion could have been addressed by this court in the underlying appeal that was dismissed for failure to prosecute. A Rule

60(b) motion is not a substitute for appeal, and thus Stoller's attempt to use it as such was appropriately rejected. See *Bell v. Eastman Kodak Co.*, 214 F.3d 798, 801 (7th Cir. 2000); *Oxxford Clothes XX, Inc. v. Expeditors Int'l of Wash., Inc.*, 127 F.3d 574,577(7th Cir. 1997).

Stoller's argument that the district court's one-line order violated Circuit Rule 50 fares no better. Circuit Rule 50
reads as follows:

> Whenever a district court resolves any claim or counterclaim on the merits, terminates the litigation in its court (as by remanding or transferring the case, or denying leave to proceed *in forma pauperis* with or without prejudice), or enters an interlocutory order that may be appealed to the court of appeals, the judge shall give his or her reasons, either orally on the record or by written statement. The court urges the parties to bring to this court's attention as soon as possible any failure to comply with this rule.

We have never explicitly stated whether Circuit Rule 50 applies to rulings on Rule 60(b) motions, nor do we have any occasion to resolve that question here. We note, however, that the matters described in Rule 50 all refer to events leading up to the final judgment in a case, whereas FED. K Civ. P. 60 provides a number of mechanisms to correct or change a judgment or order. Once the reasons for the judgment or order have been stated properly, as Rule 50 requires, it may be enough for a district court to signal its conclusion that no change is required with a very brief statement. In this case, even if Rule 50 applies, its purposes were fully met. The district court's reasoning is clear from both the record and the court's brief statement, and thus there is no need to remand for a more fulsome explanation. See *Books v. Chater,* 91 F.3d 972, 978 (7th Cir. 1996). The district court gave ample insight into its thinking in its orders addressing the underlying merits of the suit, and Stoller raised no new issues in his Rule 60(b) motion. It was clear from the record that Stoller was improperly attempting to use Rule 60(b) as a substitute for his

dismissed appeal. Remanding for additional explication would be a pointless gesture.

Finally, Stoller argues that the district court erred when it declared that he was a vexatious litigant and barred him from filing additional lawsuits without obtaining prior authorization. That is not properly an issue in this appeal, however. The present appeal involves only Stoller's challenge to the Rule 60(b) order; the court's decision on the underlying merits is not before us. If Stoller is instead trying to challenge the order issued by the Executive Committee of the Northern District of Illinois barring him from filing new lawsuits without leave from the Committee, that too is something beyond the scope of this appeal. Stoller could not have challenged the Executive Committee's order in his Rule 60(b) motion and, in any event, he already has appealed the Executive Committee's order to this court. That appeal (No. 07-1934) was dismissed for failure to pay the docketing fee. Finally, we note that on August 23, 2007, through an order entered in *Google Inc. v. Central Mfg. Co. et al.*, Nos. 07-1569, 07- 1612, and 07-1651, this

court barred Stoller from filing any new appeals until he pays a fine of $10,000; the present appeal, filed on April 24, 2007, is the last one Stoller lodged before the filing bar took effect. See also *Google, Inc. v. Central Mfg. Inc.*, No. 07-1651, 2008 WL 896376, at *1 (7th Cir. Apr. 2, 2008).

AFFIRMED.